

Declaration of Jeffrey A. Marks

Jeffrey A. Marks declares as follows:

1. I am the President of WDBJ Television, Inc. and the General Manager of Television Station WDBJ(DT), Roanoke, Virginia.
2. WDBJ has been the CBS Network affiliate in the Roanoke-Lynchburg Virginia television market since it began operations in 1955. WDBJ has consistently broadcast the most-watched news programming in the market; its news programming has won numerous awards for quality from state and national journalist organizations.
3. Television stations in medium and small television markets like Roanoke faced a significant financial burden in converting their operations to digital as part of the national transition to digital broadcasting. Like many stations, WDBJ first invested in a new tower, transmitter and antenna to begin broadcasting a digital signal. In the next phase of its transition, WDBJ acquired a high definition encoder so that network high definition programs could be broadcast. The station then began a series of upgrades to permit full digital operation and to enable it to produce and distribute local high definition programming. These steps included upgrading master control facilities, purchasing new cameras, and upgrading sets and lighting. While as of 2012 WDBJ could produce a high definition local news broadcast, it had not then replaced the equipment its News Department used to produce, edit and review news programming.
4. The editing equipment in use in 2012 had the capability of access internet sources to use material found there in newscasts. But that equipment still used monitors that displayed only a 4 by 6 picture, not the 16 by 9 proportions of a widescreen television. The editing equipment did not permit operators or editors to view anything at the edges of the picture beyond the boundaries of the editing screen or to view the edges of websites.
5. An actress who appeared in adult films retired from that career and settled in the Roanoke, Virginia area. The actress, whose real name is Tracy Rollan, appeared under the name Harmony Rose. She volunteered to serve as an Emergency Medical Technician ("EMT"). She went through training and began to serve as an EMT in Cave Spring, Virginia, a suburb of Roanoke. Her background and previous profession became controversial and residents of the community raised questions about whether she should be permitted to serve as an EMT. One stated concern was whether the former actress was continuing to benefit from sales of her films and thus from her allegedly improper former career. The County Fire Chief was sufficiently concerned to write to the County Attorney to ask whether her services should be terminated.
6. WDBJ's News Department determined that the controversy was of sufficient public interest to warrant coverage. A number of national news services also covered this story, as well as several websites for emergency professionals. WDBJ produced a story that included interviews with the actress' colleagues on the EMT squad, people who had been assisted by her, and people who had questions about the propriety of her service. The

story quoted the Fire Chief's request to the County Attorney and his response. In order to demonstrate the scope of the actress' adult film career and the fact that her films continued to be available, the story showed an image of a Google™ search of her name. The actual links shown on the search page were blurred out to avoid showing any active links to adult web sites. In addition, the photojournalist producing the story went onto a web site of the distributor of her films to obtain pictures to use in the story. These pictures showed only Ms. Rollan sitting on a bed and only her face and shoulders could be seen.

7. The web site from which WDBJ obtained pictures used to illustrate the news story about Ms. Rollan showed the clothed images of the actress that were the focus of the report, but also included along the edge of the screen "boxes" that displayed other films available from the film distributor. Because they were at the far edge of the website, the "boxes" could not be seen by WDBJ's journalists when they downloaded images for use in the news story. However, these areas of the website were visible when the story was viewed on a wide-screen television as it was broadcast. At one point during the story, video of the website briefly showed at the far right edge of the screen a portion of one of these "boxes" which included a male actor fondling his penis. That image was not viewable by the photojournalist when he downloaded the images from the website or when he put the story together.
8. Because the story involved sensitive material, it received careful review before it was aired. It was reviewed and edited by two senior staff in the WDBJ News Department. Since editorial review at WDBJ took place on the same editing equipment, the reviewers could not see the "boxes" at the edge of the screen and were not aware that they were there. Thus, WDBJ personnel were entirely unaware that this image could be seen in the story as broadcast. Had they seen the image, it would have been edited out before the story was broadcast.
9. Part of that "box," however, did appear for 2.7 seconds at the far right edge of the screen when the story was broadcast and viewed on a wide-screen television. The image on a wide-screen television occupied only 1.7 percent of the screen. A full-frame digital picture from a television station broadcasting, like WDBJ, a 1080i digital signal, occupies 1920 by 1080 pixels, or a total of 2,076,600 pixels. The "box" on the side of the screen where the allegedly offensive material could be seen, took up, as measured by WDBJ engineers, 111 by 328 pixels, for a total of 36,408 pixels, or 1.7 percent of the total screen area.
10. A few viewers nonetheless noticed the picture and complained to the station. WDBJ immediately investigated and found that this entirely unrelated picture had been inadvertently shown as part of its news program. It deleted the story from its online website, www.wdbj7.com, decided that the story would not be shown again in any other newscasts, and issued apologies to complaining viewers for the brief and inadvertent inclusion of unrelated material in its newscast.

11. WDBJ took prompt steps to ensure that material taken from the internet could not and would not be inadvertently included in news programming. These measures, which have continued to this day, included:
 - WDBJ replaced its entire news editing system, including the monitors that were incapable of displaying an entire 16 by 9 broadcast picture, at a cost of \$798,310. This system includes not only the editing function but also the systems used to download and review any material from internet sources.
 - Following the incident in 2012, WDBJ conducted training sessions for all news personnel concerning the uses of internet material and the Commission's indecency policies.
 - WDBJ subsequently conducted training for all employees about copyright issues and their impact on selection of material to be included in news programming.
12. WDBJ instituted a formal policy requiring approval of two news managers before any material obtained from an internet source is placed on air on the Station's website. That policy provides:

WDBJ7 Indecency Rules and Airing of Internet Material

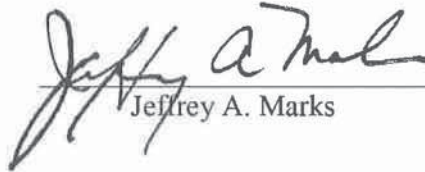
Any screen shots or video from Internet sources such as websites or social media used in newscasts must go through the following procedures before airing on WDBJ7, My19, or any future channels licensed by WDBJ Television, Inc.:

- 1) A news manager must give preliminary approval to use Internet material. Reporters and MMJ's must make the request and provide reasons why the material is important to the story.
- 2) All efforts must be made to blur, mask, or crop Internet or social media material around the pertinent subject of the story.
- 3) Photographers and editors must view the complete story in its entirety on a full HD monitor once the story is edited.
- 4) The story must be reviewed by both the newscast producer and a news manager before it airs. Visual review of the story must occur on a full HD monitor so all parts of the screen are able to be seen.
- 5) News managers and producers must carefully review the visual material to make sure it complies with indecency rules and copyright laws.

6) The need to get a story on the air quickly in a breaking news situation does NOT supersede the above procedures.

Failure to follow the outlined rules may lead to disciplinary action up to and including suspension or termination of employment.

13. WDBJ has since 2012 conducted training sessions for news employees in small groups about the uses of material found on the internet and, in particular, the need for complete examination of all such material before it is used.
14. I have reviewed the "Opposition of WDBJ Television, Inc. to Notice of Apparent Liability" and the factual statements in it are, to the best of my knowledge, true and correct.
15. I declare under penalty of perjury that the above statements are true and correct.


Jeffrey A. Marks

June 30, 2015

APPENDIX B

AWARDS RECEIVED BY WDBJ(DT) FOR QUALITY NEWS PROGRAMMING

Awarding Organizations:

NATAS – National Academy of Television Arts and Sciences

RTDNA – Radio Television Digital News Association

VAB – Virginia Association of Broadcasters

VAPB – Virginia Associated Press Broadcasters

2004

VAB – Best Documentary “What a Picture I Got—Images and Words of O. Winston Link”

2007

RTDNA – Regional Edward R. Murrow Award for Continuing Coverage

RTDNA – Regional Edward R. Murrow Award for Investigative Reporting

2008

NATAS – Regional Emmy Award for Best Weekend Newscast

VAPB – Outstanding Television News Operation

2009

VAB – Senior Reporter Joe Dashiell received the George A. Bowles Jr. Broadcast Journalism Award

2010

RTDNA – Regional Edward R. Murrow Award – Best Video News Series “Headlines in Hard Times”

VAPB – Best Coverage of a Continuing News Story

2011

VAB – Best Human Interest Series

VAB – Retired WDBJ7 Anchor Keith Humphry received the George A. Bowles Jr. Broadcast Journalism Award

VAPB – Superior Award for Continuing Coverage

VAPB – Meritorious Award for Best News Anchor of the Year -- Jean Jadhon

VAPB – Meritorious Award for Public Service Through Journalism

VAPB – Meritorious Award for In-Depth Reporting

VAPB – Meritorious Award for Feature Photography

2012

NATAS -- Emmy Award for Best Team Coverage
NATAS – Emmy Award for Best Daytime Newscast (5 p.m.)
NATAS – Emmy Award for Best Evening Newscast (11 p.m.)
RTDNA – Regional Edward R. Murrow Award for Overall News Excellence
VAPB -- Best Weathercast of the Year By a Television Station
VAPB -- Best Coverage of a Continuing News Story By a Television Station

2013

NATAS – Regional Emmy Award for Best Feature News Report Light Series “Virginia Roots & Tennessee Dreams: The Legacy of Patsy Cline
NATAS – Regional Emmy Award for Best Daytime Newscast (6 p.m.)
RTDNA – Regional Edward R. Murrow Award for Overall Excellence

2014

RTDNA – Regional Edward R. Murrow Award for Best Website
VAB – Outstanding Website
VAB – Best Documentary “Faces of Domestic Violence”

2015

NATAS – Nominated for Regional Emmy Award for “Facing the Future” (winners announced 06/27/15)
NATAS – Nominated for Regional Emmy Award for “Not So Sweet: The Truth about Diabetes” (winners announced 06/27/15)
VAB – Winner or runner-up for Outstanding News Series “Facing the Future” (to be awarded 06/26/15)
VAPB – Douglas Southall Freeman Award for Public Service through Television Journalism - Meritorious



JEFFREY A. MARKS
PRESIDENT & GENERAL MANAGER
jmarks@wdbj7.com

July 1, 2015

The Honorable Morgan Griffith
323 West Main Street
Abingdon, VA 24210

Dear Representative Griffith:

You may have read about the record \$325,000 fine for indecency the FCC recently suggested be imposed on WDBJ Television, Inc. in Roanoke, Virginia. As a courtesy, I wanted you to have a copy of the document WDBJ7 has filed to oppose that fine.

In short, in coverage of a story of importance to the Cave Spring community in Roanoke, a WDBJ7 editor accidentally included a piece of video that contained an offensive image. Our filing explains how that image was on only 1.7% of the screen (in the far right margin) for 2.7 seconds and that it was not visible to the photographer who edited the story or to the two supervisors who also reviewed the story before it aired. The filing details how the FCC made incorrect assumptions in assessing the fine and veered from its own past practices as it relates to "fleeting" and "unintentional" images in news coverage.

This year, WDBJ7 will celebrate its 60th year of serving the citizens of the Roanoke Valley with honesty and integrity. We deeply regret the technical mistake made in this story but believe the FCC action excessive.

I hope you will contact me directly if you have questions or concerns.

Sincerely,

Attachment





LOCAL OFFICE ON AGING

PO Box 14205
706 Campbell Avenue, SW
Roanoke, VA 24038-4205
(540) 345-0451
Fax (540) 981-1487
www.loaa.org

The Area Agency of Aging
Serving Virginia's 5th
Planning District

Meals on Wheels
Diners Clubs
Care Coordination
Transportation
Health Promotion
Ombudsman
Homemaker
Personal Care
Health Insurance Counseling
Foster Grandparent
Program
Senior Companion
Program
Senior Safety
Cooling Assistance
Legal Assistance
Caregiver Assistance
Information and
Referral
Volunteer Opportunities
LOA News
Speaker's Bureau

June 25, 2015

Mr. Mike Bell
Programming and Promotion Director
WDBJ 7
2807 Hersherberger Road NW
Roanoke, VA 24017

Dear Mr. Bell:

I want to personally thank you, Mike Pettit, especially Lindsey Anderson and all the WDBJ 7 staff involved in producing and airing on your station Public Service Announcements valued at **\$11,000** in support of the LOA Local Office on Aging's Meals on Wheels **Let's Do Lunch** fundraiser on June 19th.

That PSA which began airing in May was instrumental in helping LOA sell **2707** lunches throughout the Roanoke Valley, the highest total we have ever sold in the **25** years of this fundraising event. In addition to the lunches sold, our cash donations to the program have also greatly increased.

Due to federal budget cuts, LOA was forced to **remove 100** seniors from our meals program. We are currently serving 75 fewer seniors than in 2013.

The sale of these lunches will help LOA purchase an additional **5414** lunches for the homebound, frail elderly of the counties of Alleghany, Botetourt, Craig and the Roanoke Valley.

Again, I want to thank you for your generosity and support of our agency and the seniors we serve.

Sincerely,

Shannon G. Abell
Director of Senior Services
540-345-0451 ext 3028

Cc: Mike Pettit, Creative Director



OFFICE OF
THE CHAIRMAN

FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON

October 26, 2015

The Honorable Morgan Griffith
U.S. House of Representatives
1108 Longworth House Office Building
Washington, D.C. 20515

Dear Congressman Griffith:

Thank you for your letter asking to be updated on the indecency enforcement matter involving WDBJ Television, Inc. (WDBJ). Your views are very important, and I appreciate your concern in a matter involving WDBJ as a member of your community.

As you note, the Commission's Enforcement Bureau served a Notice of Apparent Liability (NAL) on WDBJ for the incident, and WDBJ has filed its response to the NAL. Commission rules preclude me from sharing specific information about any ongoing investigation or discussing the merits of a response. However, I will contact your office with a copy of our determination once the matter has been concluded.

I appreciate your interest in this matter. Please let me know if I can be of any further assistance.

Sincerely,

A handwritten signature in blue ink, appearing to read "Tom Wheeler", is written over a horizontal line.

Tom Wheeler